

**REMARKS**

Reconsideration is respectfully requested.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

**Paragraph 1 of the Office Action**

Claim 13 has been objected to for the informalities noted in the Office Action.

Claim 13 has been amended in a manner believed to clarify any informalities in the language, especially the particular points identified in the Office Action.

Withdrawal of the objection to claims \_ is therefore respectfully requested.

**Paragraphs 2 through 4 of the Office Action**

Claim 1 has been rejected under 35 U.S.C. §112 (second paragraph) as being indefinite.

The above amendments to the claims are believed to clarify the requirements of the rejected claims, especially the particular points identified in the Office Action.

Withdrawal of the §112 rejection of claim 1 is therefore respectfully requested.

**Paragraphs 5 and 6 of the Office Action**

Claims 1, 6, 11 and 12 have been rejected under 35 U.S.C. §102(b) as being anticipated by US Patent 6,009,400 to Blackman (hereinafter Blackman).

In regards to claims 1 and 11, it is submitted that the Blackman reference does not disclose, teach or suggest "a bar code indicia indicating the expiration date of the product such that said bar code indicia is readable after the expiration date of the product,

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said bar code indicia being marked on the product". The Blackman reference teaches an arrangement that fails to teach the bar code being readable after the expiration of the product as claimed by the applicant. Further, the Blackman reference teaches away from that claimed by the applicant in that the Blackman reference teaches the scannability of the bar code becoming at least gravely impaired when the product has been exposed to conditions spoiling the product. Therefore, it is submitted that the Blackman reference would not lead one to anticipate the combination of the features as claimed by the applicant.

Claim 6 is dependent upon claim 1, particularly as amended, and therefore incorporates the requirements of claim 1. Thus, claim 6 is also believed to be allowable over the cited reference.

Claim 12 is dependent upon claim 11, particularly as amended, and therefore incorporates the requirements of claim 11. Thus, claim 12 is also believed to be allowable over the cited reference.

Withdrawal of the §102(b) rejection of claims 1, 6, 11 and 12 is therefore respectfully requested.

#### Paragraph 7 of the Office Action

Claims 2 through 5, 7, 9, 10 and 13 through 15 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Blackman.

The law regarding obviousness is clear--any modification of the prior art must be suggested or motivated by the prior art:

'Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.' [citation omitted] Although couched in terms of combined teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art. The mere fact that the prior art may be modified in the

manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

In re Fritch, 972 F.2d 1260; 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992), (in part quoting from ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577; 221 USPQ 929, 933 (Fed. Cir. 1984)).

In regards to claims 1, 11 and 15, it is submitted that the Blackman reference does not disclose, teach or suggest "a bar code indicia indicating the expiration date of the product such that said bar code indicia is readable after the expiration date of the product, said bar code indicia being marked on the product". As discussed above, the Blackman reference teaches away from the bar code being readable after the expiration of the product as claimed by the applicant. Therefore, it is submitted that the Blackman reference would not lead one to anticipate the combination of the features as claimed by the applicant.

Claims 2 through 5, 7, 9, 10 are dependent upon claim 1, particularly as amended, and therefore incorporate the requirements of claim 1. Thus, claims 2 through 5, 7, 9, 10 are also believed to be allowable over the cited reference.

Claims 13 and 14 are dependent upon claim 11, particularly as amended, and therefore incorporate the requirements of claim 11. Thus, claims 13 and 14 are also believed to be allowable over the cited reference.

Withdrawal of the §103(a) rejection of claims 2 through 5, 7, 9, 10 and 13 through 15 is therefore respectfully requested.

#### **Paragraph 8 of the Office Action**

Claims 8 and 14 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Blackman in view of US Patent 5,196,686 to Leister (hereinafter Leister).

The law regarding obviousness is clear--any modification of the prior art must be suggested or motivated by the prior art:

'Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.' [citation, omitted] Although couched in terms of combined teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

In re Fritch, 972 F.2d 1260; 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992), (in part quoting from ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577; 221 USPQ 929, 933 (Fed. Cir. 1984)).

It is submitted that the combination of Blackman with Leister is not suggested by the prior art, and even if such a combination were to be made, one would not be led to the combination of features recited in applicants' claims. In particular, the references do not disclose, teach or suggest "a bar code indicia indicating the expiration date of the product such that said bar code indicia is readable after the expiration date of the product, said bar code indicia being marked on the product". As discussed above, the Blackman reference teaches away from the bar code being readable after the expiration of the product as claimed by the applicant. The Leister reference teaches a checkout system that fails to teach the bar code being readable after the expiration of the product as claimed by the applicant. Therefore, it is submitted that the combination of the Blackman reference with the Leister reference would not lead one to the combination of features as claimed by the applicant.

It is also submitted that the mere fact that one may argue that the prior art is capable of being modified to achieve a claimed structure does not by itself make the claimed structure obvious-- there must be a motivation provided by the prior art, and that motivation is totally lacking in the reference.

The examiner finds the claimed shape would have been obvious urging that (our emphasis) "it is obvious for one skilled in the art to form each hook base of any desired shape \*\*\* since *this is within the capabilities of such a person.*" Thus, the examiner equates that which is within the capabilities of one skilled in the art with obviousness. Such is not the law. There is nothing in the statutes or the case law which makes "that which is within the capabilities of one skilled in the art" synonymous with obviousness.

The examiner provides no reason why, absent the instant disclosure, one of ordinary skill in the art would be motivated to change the shape of the coil hooks of Hancock or the German patent and we can conceive of no reason.

Ex parte Gerlach and Woerner, 212 USPQ 471 (PTO Bd. App. 1980) (emphasis in original).

Claim 8 is dependent upon claim 1, particularly as amended, and therefore incorporates the requirements of claim 1. Thus, claim 8 is also believed to be allowable over the cited reference.

Claim 14 is dependent upon claim 11, particularly as amended, and therefore incorporates the requirements of claim 11. Thus, claim 14 is also believed to be allowable over the cited reference.

Withdrawal of the §103(a) rejection of claims 8 and 14 is therefore respectfully requested.

**VERSION WITH MARKINGS TO SHOW CHANGES MADE:**

**In the Claims** (bracketed parts deleted and underline parts added):

1. (Amended) A bar code indicia system for signaling when an expiration date of a product has passed, said bar code indicia system comprising:

a bar code indicia indicating the expiration date of the product such that said bar code indicia is readable after the expiration date of the product, said bar code indicia being marked on the product;

a detecting means for scanning said bar code indicia such that detecting means is for detecting the expiration date of said bar code indicia; and

a signaling means being operationally coupled to said detecting means, said signaling means being for signaling to a potential buyer that the expiration date of the product occurred before a date of detection of said bar code indicia.

2. (Pending) The bar code indicia system of claim 1, wherein said bar code indicia comprises a plurality of bars being marked on the product, each of said bars being arranged in a manner indicating a particular expiration date of the product.

3. (Pending) The bar code indicia system of claim 2, wherein each of said bars is orientated substantially parallel to each other.

4. (Pending) The bar code indicia system of claim 2, further comprising:

a substrate having a top surface, each of said bars being marked on said top surface of said substrate.

5. (Pending) The bar code indicia system of claim 4, wherein said substrate has a bottom surface with an adhesive thereon for attachment to the product.

6. (Pending) The bar code indicia system of claim 1, wherein detecting means comprises:  
a scanner being adapted for scanning bar code indicia;  
a processor being connected to said scanner; and  
wherein said signaling means is coupled to said processor.

7. (Pending) The bar code indicia system of claim 6, wherein said processor is adapted to compare the date of detection of the bar code indicia to the expiration date of the product represented by the bar code indicia and to cause said signaling means to signal to the buyer when that the expiration date is before the date of detection.

8. (Pending) The bar code indicia system of claim 6, wherein said scanner is mounted in a counter having a scanner window, said scanner being positioned under said scanner window.

9. (Pending) The bar code indicia system of claim 6, wherein said signaling means comprises:  
a translucent cylindrical housing being mounted on a counter,  
a light being removably mounted in said housing.

10. (Pending) The bar code indicia system of claim 1, wherein said signaling means comprises:

a translucent cylindrical housing being mounted on a counter and a light being illuminatable upon actuating by said detecting means, said light being removably mounted in said housing.

11. (Amended) A bar code indicia system for signaling when an expiration date of a product has passed, said bar code indicia system comprising:

- a detecting means for [detecting] scanning a bar code indicia, said bar code indicia being readable after the expiration date of the product; and
- a signaling means being operationally coupled to said detecting means, said signaling means being for signaling to a potential buyer that the expiration date of the product occurred before a date of detection of said bar code indicia.

12. (Pending) The bar code indicia system of claim 11, wherein said detecting means comprises:

- a scanner being adapted for scanning bar code indicia;
- a processor being connected to said scanner; and
- wherein said signaling means is connected to said processor.

13. (Amended) The bar code indicia system of claim 12, wherein said processor is adapted to compare a date of detection of the bar code indicia to the expiration date of the product represented by the bar code indicia and to cause said signaling means to signal to the buyer when the expiration date [id] is before the date of detection.



14. (Pending) The bar code indicia system of claim 12, wherein said scanner is mounted in a counter having a scanner window, said scanner being positioned under said scanner window, said signaling means comprising a cylindrical housing being mounted on said counter, a light being removably connected in said housing.

15. (Amended) System for signaling that a product expiration date has passed, said bar code indicia system comprising:

a bar code indicia being readable after the expiration date of the product, said bar code indicia comprising;

a substrate, said substrate having a top surface, wherein said substrate comprises a label having a bottom surface with an adhesive applied thereon for attachment to the product;

a plurality of bars being marked on said top surface of said substrate, each of said bars being arranged on said substrate in a manner indicating a particular expiration date of the product, each of said bars being orientated parallel to each other;

a detecting means for detecting said bar code indicia, said detecting means comprising;

a scanner being adapted for scanning bar code indicia, said scanner being mounted under a counter having an upper surface for holding the products to be scanned; and


a processor being coupled to said scanner, said processor being adapted for comparing the current date to the expiration date of the product and signaling to the consumer that the expiration date on the product has passed;

a signaling means for signaling when the expiration date of the product has passed, said signaling means being coupled to said processor, said signaling means comprising a light being mounted on the upper surface of the counter, wherein the consumer may see said light illuminate when the product passed over the scanner has expired.

### CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

  
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